

§ 50.6

(b) If the Board reverses the findings of the retiring board being reviewed, it will make complete findings, including:

(1) Whether the applicant was incapacitated for active service;

(2) If so, the disability causing the incapacity;

(3) Whether the incapacity is permanent;

(4) Whether the incapacity was the result of an incident of service or incurred in the line of duty;

(5) Whether the incapacity was the result of the applicant's own vicious habits;

(6) In the case of Reserve officers and officers who have served under temporary appointments, when the physical disability was incurred.

(c) The findings and decision of a majority of the Board will constitute the findings and decision of the Board Members who do not concur with the majority may file a minority report.

(d) When the Board has concluded its proceedings in any case the Recorder will prepare a complete record thereof including (1) the application for review (2) a transcript of the hearing, if any (3) affidavits, briefs, and written agreements filed in the case, (4) the findings and decision of the Board, and (5) all other papers and documents necessary to reflect a true and complete record of the proceedings. This complete record will be transmitted to the Commandant for appropriate action.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948, and amended at CGFR 53-12, 18 FR 2953, May 22, 1953]

§ 50.6 Notification of final action.

The officer requesting the interview will be notified by letter of the final action taken in the case.

[CGFR 48-73, 13 FR 9333, Dec. 31, 1948]

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

Sec.

51.1 Basis and purpose.

51.2 Authority.

51.3 Applicability and scope.

51.4 Definitions.

51.5 Objective of review.

51.6 Propriety standard of review.

51.7 Equity standard of review.

51.8 Relevant considerations.

33 CFR Ch. I (7-1-05 Edition)

51.9 Discharge review procedures.

51.10 Decisions.

51.11 Records.

AUTHORITY: 10 U.S.C. 1553; Pub. L. 107-296, 116 Stat. 2135.

SOURCE: CGD 81-104, 50 FR 41495, Oct. 11, 1985, unless otherwise noted.

§ 51.1 Basis and purpose.

This part establishes the procedures for review of administrative discharges from the Coast Guard by a Discharge Review Board (DRB) or by the Secretary of the Department, and for the compilation of the record of the DRB determination, made available for public inspection, copying and distribution through the Armed Forces Discharge Review/Correction Board Reading Room.

§ 51.2 Authority.

(a) The Secretary of Homeland Security has the authority to establish a Discharge Review Board (DRB) to review the discharge of a former member of the United States Coast Guard under the provisions of 10 U.S.C. 1553. This part prescribes the establishment and outlines the procedures of the Coast Guard Discharge Review Board. The Secretary retains the authority to review and take final action on the DRB's findings in the following cases:

(1) Those cases in which a minority of the board requests that their written opinion be forwarded to the Secretary for consideration;

(2) Those cases selected by the Commandant to inform the Secretary of aspects of the board's functions which may be of interest to the Secretary;

(3) Any case in which the Secretary demonstrates an interest;

(4) Any case which the President of the board believes is of significant interest to the Secretary.

(b) The Commandant of the Coast Guard is delegated the authority to:

(1) Appoint members to serve on the Discharge Review Board;

(2) Appoint alternates to serve on the DRB in the event that a regularly appointed member is unavailable;

(3) Designate a member as the President of the DRB; and

Coast Guard, DHS

§51.5

(4) Review and take final action on all DRB decisions which are not reviewed by the Secretary.

[CGD 81-104, 50 FR 41495, Oct. 11, 1985, as amended by CGD 97-023, 62 FR 33362, June 19, 1997; USCG-2003-14505, 68 FR 9535, Feb. 28, 2003]

§51.3 Applicability and scope.

The provisions of this part apply to the United States Coast Guard including reserve-components and all former members who have been discharged within 15 years of the date upon which application for review is received by the DRB. A former member may apply to the DRB for a change in the character of, and/or the reason for, the discharge. The Coast Guard DRB review is generally applicable only to administrative discharges, however, the DRB may review the discharge of a former member by sentence of a court-martial for the purpose of clemency. A petition for clemency will not be considered by the DRB unless the applicant has exhausted all appellate remedies. Upon a petition for clemency, the DRB shall consider only the equity of the discharge awarded.

§51.4 Definitions.

Applicant. A former member of the Coast Guard who has been discharged from the service but excluding those discharged by sentence of a court-martial, except as provided in §51.3. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

Counsel. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: A lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; or a representative from private organizations or local government agencies.

Discharge. Any formal separation of a member from the Coast Guard which is not termed "honorable", including dis-

missals and "dropping from the rolls". This term also includes the assignment of a separation program designator, separation authority, the stated reason for the discharge, and the characterization of service.

Discharge Review. The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 38 U.S.C. 3103(e)(2).

Discharge Review Board. A board consisting of five members of the U.S. Coast Guard, appointed by the Commandant of the Coast Guard and vested with the authority to review the discharge of a former member. The board is empowered to change a discharge or issue a new discharge to reflect its findings, subject to review by the Commandant or the Secretary.

Hearing. A proceeding which, upon request of the applicant, is utilized in the discharge review process enabling the applicant and/or the applicant's representative to appear before the DRB and present evidence.

President. An officer of the United States Coast Guard appointed by the Commandant as President to preside over the DRB. The President will convene the board and may also serve as a member. If the President does not serve as a member of the DRB, the President shall designate a presiding officer for the board to serve as President.

[CGD 81-104, 50 FR 41495, Oct. 11, 1985, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

§51.5 Objective of review.

The objective of the discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes if necessary. The DRB will utilize its discretion to reach a fair and just resolution of the applicant's claim. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change, or denial of change, in a discharge.

§ 51.6

33 CFR Ch. I (7–1–05 Edition)

§ 51.6 Propriety standard of review.

A discharge is deemed to be proper except that:

(a) A discharge may be improper if an error of fact, law, procedure, or discretion was associated with the discharge at the time of issuance which prejudiced the rights of the applicant.

(b) A discharge may be improper if there has been a change in policy by the Coast Guard made expressly retroactive to the type of discharge under consideration.

§ 51.7 Equity standard of review.

(a) A discharge is presumed to be equitable and will not be changed under this section unless the applicant submits evidence sufficient to establish, to the satisfaction of the DRB that:

(1) The policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of that type, provided that current policies or procedures represent a substantial enhancement of the rights afforded a party in such proceedings, and there is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; or

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Coast Guard; or

(3) The applicant's military record and other evidence presented to the DRB, viewed in conjunction with the factors listed in § 51.8 and the regulations under which the applicant was discharged, do not fairly justify the type of discharge received.

(b) If the applicant was discharged with a characterized discharge before June 15, 1983, a change from the characterized discharge to an uncharacterized discharge will not be considered under the provisions of (a)(1) of this section unless specifically requested by the applicant. A determination that a discharge is inequitable according to the provisions of (a)(2) or (a)(3) of this section shall entitle the applicant to a discharge of a type to which the applicant was enti-

tled at the time the original discharge was issued.

§ 51.8 Relevant considerations.

In determining the equity and propriety of a former member's discharge, the DRB shall consider all relevant evidence presented by the applicant. The DRB review will include, but is not limited to, consideration of the following factors:

(a) The quality of the applicant's service. In determining the quality of the applicant's service, the DRB may consider the applicant's dates and periods of service; rate or rank achieved; marks and evaluations received; awards, decorations and letters of commendation; acts of merit; combat service and wounds received; promotions and demotions; prior military service and type of discharge; records of unauthorized absence; records of non-judicial punishment; convictions by court-martial; records of conviction by civil authorities while a member of the Coast Guard; and any other relevant information respecting the applicant which is brought to the board's attention.

(b) The applicant's capability to serve. In determining the applicant's capability to serve, the DRB considers such factors as the applicant's age and education; qualification for reenlistment; capability to adjust to military service; and family or personal problems.

(c) Any evidence of arbitrary, capricious or discriminatory actions by individuals in authority over the applicant.

(d) Any other information respecting the applicant considered by the DRB to be relevant and material to the review of the applicant's discharge.

§ 51.9 Discharge review procedures.

(a) *Preliminary.* Prior to a review, applicants or their representatives may obtain copies of military records by submitting a Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC), 9799 Page Boulevard, St. Louis, MO. 72132. The request to the NPRC should be submitted prior to submitting the application for review, so that relevant information from the

record can be included with the application.

(b) *Initiation of review.* Review may be initiated by an applicant or by the DRB. The applicant may apply for DRB review of discharge by submitting DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, along with any other statements, affidavits or documentation desired by the applicant. The application must be received by the DRB within fifteen (15) years of the date of the discharge. The application form can be obtained, along with explanatory matter, from Commandant, (G-WPM), U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, any regional VA office, or by writing to the Armed Forces Review/Correction Board Reading Room, Pentagon Concourse, Washington, DC 20310.

(c) *Notice.* (1) The DRB will provide notification advising the former member of—

- (i) Receipt of the applicant's request;
- (ii) The right to appear before the board in person or by counsel; and
- (iii) The date of review.

If the former member is deceased, written notice of DRB review will be sent to the surviving spouse, next of kin or legal representative of the former member. If the review is initiated by the DRB, notification will be sent to the last known address of the former member.

(2) Prior to the initiation of the decision process, the DRB will notify the former member of the date by which requests to examine the documents to be considered by the board must be received. This notice will also state the date by which a request for a hearing must be made and the deadline for filing responses to the board.

(3) An applicant who requests a hearing will be notified of the time and place of the hearing. All expenses incurred by the applicant in DRB proceedings and hearings are the sole responsibility of the applicant and are not obligations of the U.S. Coast Guard or the Department of Transportation. If the applicant fails to appear, except as provided in §51.9(f), the DRB will review the discharge and reach a decision based upon the evidence of record.

(d) *Withdrawal of application.* An applicant may withdraw an application without prejudice at any time before the scheduled review. An application which is withdrawn will not stay the running of the 15 year statutory limitation imposed on the authority of the DRB to review the discharge.

(e) The DRB will consider the records and other data submitted by the applicant. The DRB may consider other probative evidence provided that all materials relied on by the DRB, except classified documents, are made available to the applicant and applicant's representative prior to the hearing date (or review date if no hearing is requested). The DRB shall not consider a classified document in the review of a discharge unless a summary of, or extract from, the document (deleting all reference to sources of information and other matters, the disclosure of which would, in the opinion of the classifying authority, be detrimental to the security interests of the United States) is made available to the applicant.

(f) *Postponement of review or hearing.* At any time before the date of scheduled review or hearing, an applicant may be granted a continuance, provided the applicant or the applicant's counsel makes a written request for additional time to the DRB which shows good cause to justify the postponement.

(g) *Hearing procedures.* The following procedures apply to DRB hearings:

(1) DRB hearings are not public. Presence at hearings is limited to persons authorized by the Commandant or expressly requested by the applicant, subject to reasonable limitations based upon available space.

(2) The Federal Rules of Evidence are not applicable to DRB proceedings. The presiding officer rules on matters of procedure and ensures that reasonable bounds of relevancy and materiality are adhered to in the taking of evidence.

(3) An applicant is permitted to make a sworn or unsworn statement. Witness testimony will only be taken under oath or affirmation. An applicant or witness who makes a statement may be questioned by the DRB.

§ 51.10

33 CFR Ch. I (7–1–05 Edition)

(4) An applicant may make oral or written argument personally or through his or her representative.

(h) *Reconsideration.* The decision of the DRB may not be reconsidered unless—

(1) The only previous consideration of the case was on the motion of the DRB;

(2) Changes in discharge policy occur;

or

(3) New, substantial, relevant evidence, not available to the applicant at the time of the original review, is submitted to the DRB.

[CGD 81–104, 50 FR 41495, Oct. 11, 1985, as amended by CGD 96–026, 61 FR 33663, June 28, 1996]

§ 51.10 Decisions.

(a) The DRB will make written findings and conclusions with respect to all disputed facts and issues. The decision of the DRB is governed by the vote of a majority of the board.

(b) A decision document is prepared for each review conducted by the DRB. This document contains—

(1) The date, character of, and reason for the discharge including the specific authority under which the discharge was issued;

(2) The specific change(s) requested by the applicant;

(3) A list of the issues raised by the applicant;

(4) The circumstances and character of the applicant's service, as extracted from the service record, health record and other evidence presented to the DRB;

(5) References to documentary evidence, testimony or other material relied on by the DRB in support of its decision;

(6) A statement of the DRB's findings with respect to each issue raised by the applicant;

(7) A summary of the rationale and a statement of the DRB's conclusions as to whether any change, correction or modification should be made in the type or character of the discharge or the reason and authority for the discharge; and

(8) A statement of the particular changes, correction, or modification made by the DRB.

§ 51.11 Records.

(a) The record of the discharge review will include—

(1) The application for review;

(2) A summarized record of the testimony and a summary of evidence considered by the DRB other than information contained in the service records;

(3) Briefs or written arguments submitted by or on behalf of the applicant;

(4) The decision of the DRB;

(5) Advisory opinions relief upon for the final action; and

(6) The final action on the DRB decision by the Commandant or Secretary.

(b) The record of the discharge review is incorporated into the service record of the applicant.

(c) A copy of the decision of the DRB and the final action thereon is made available for public inspection and copying promptly after a notice of the final decision is sent to the applicant. However, to the extent required for the protection of privacy rights, identifying details of the applicant and other persons are deleted from the public record.

(1) DRB documents made available for public inspection and copying are located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents are indexed so as to enable the public to determine why relief was granted or denied. The index includes the case number, the date, character of, reason for, and authority for the discharge and is maintained at Coast Guard Headquarters and the Armed Forces Reading Room. The Armed Forces Discharge Review/Correction Board Reading Room publishes indexes quarterly for all boards.

(2) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) should be addressed to: Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, DC 20310.